

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SIMPLIVITY CORPORATION,

Plaintiff,

v.

SPRINGPATH, INC.,

Defendant.

C.A. NO. 4:15-cv-13345-TSH

**DEFENDANT SPRINGPATH, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION TO TAKE JUDICIAL NOTICE OF HEARING TRANSCRIPT PURSUANT  
TO FEDERAL RULE OF EVIDENCE 201**

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*Counsel for Defendant Springpath, Inc.*

Dated: February 26, 2016

## **I. INTRODUCTION AND RELIEF SOUGHT**

Pursuant to Federal Rule of Evidence 201, Defendant Springpath, Inc. (“Springpath”) respectfully requests the Court to take judicial notice of the transcript of the January 26, 2016 Motion Hearing before this Court on Springpath’s Motion to Dismiss Plaintiff’s First Amended Complaint (“Motion Hearing Transcript”), which is attached as Exhibit A to the Declaration of Anant Saraswat, Esq. in Support of Defendant Springpath, Inc.’s Motion to Dismiss Plaintiff’s Second Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), filed concurrently herewith. The transcript is a court record and thus properly subject to judicial notice. Moreover, the transcript is properly before this Court on consideration of Springpath’s pending Motion to Dismiss Plaintiff’s Second Amended Complaint.

## **II. ARGUMENT**

Federal Rule of Evidence 201(b)(2) states that this Court “may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). The Motion Hearing Transcript is a record of this Court, and a court may “take judicial notice of its own records.” *United States v. Pelletier*, 469 F.3d 194, 203 (1st Cir. 2006). Thus, the Court should take judicial notice of the Motion Hearing Transcript.

Furthermore, it is proper for the Court to consider the Motion Hearing Transcript at this point in the case. The Motion Hearing Transcript is relied on in Springpath’s Motion to Dismiss Plaintiff’s Second Amended Complaint, filed concurrently herewith. When adjudicating a motion to dismiss, the Court can consider “documents incorporated by reference [in the complaint], matters of public record, and other matters susceptible to judicial notice.”

*Giragosian v. Ryan*, 547 F.3d 59, 65 (1st Cir. 2008).

### **III. CONCLUSION**

For the foregoing reasons, the Defendant requests this Court to enter an order taking judicial notice of the Motion Hearing Transcript.

Dated: February 26, 2016

Respectfully Submitted,

/s/ Louis Tompros

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*Counsel for Defendant Springpath, Inc.*

**CERTIFICATE OF SERVICE**

I, Anant Saraswat, hereby certify that a true copy of the attached was served upon the attorney of record for each other party through the Court's CM/ECF system on February 26, 2016.

/s/ Anant Saraswat

Anant Saraswat